admitting that action will lie for a malicious prosecution, denies the right to bring an action for a malicious defense, on the ground that no authority can be found for such an action and that one sued has the same right to defend himself as has one who is physically assailed. The decision of the principal case will probably be generally approved, because to permit such suits would make litigation almost interminable.

TRIAL—OPENING STATEMENT—DIRECTION OF VERDICT—POWER OF COURT.—In an action of forcible detainer, the attorney for the defense in making his opening statement to the jury admitted that the legal title was in the plaintiff. *Held,* that the court may not direct a verdict for the plaintiff on the opening statement of the defendant's counsel, because the defendant is entitled to have his issues made by the pleadings and evidence submitted to the jury. *Pietsch* v. *Pietsch et al.* (1910), — Ill. —, 92 N. E. 325.

The cases upon this point may be divided into three classes. First, those holding that the opening statement by counsel is not a solemn admission in court of facts material to the case, but that it is a mere recital of what facts counsel intend to disclose and as such is not sufficient grounds for a nonsuit, even though it might contain something that would, if established by evidence, be fatal to the cause of the plaintiff. *Fillingham* v. *St. Louis Transit Co.,* 102 Mo. App. 573; *Fletcher* v. *The London and Northwestern Ry. Co.* [1892] 1 Q. B. 122, 65 L. T. 605; *Sullivan* v. *Williamson,* 21 Okla. 844. Second, those holding that the court is warranted in acting on the admissions made by the parties during the trial of a cause; and when the plaintiff in making the opening statement of his case admits or states facts the existence of which absolutely preclude a recovery by him the court may close the trial at once and give judgment against him. *Lindley* v. *A. T. & S. F. Ry. Co.,* 47 Kan. 432, 28 Pac. 201; *Carr* v. *Del. L. & W. Ry. Co.,* — N. J. —, 75 Atl. 928. However the courts which follow this somewhat arbitrary rule are very cautious in its use. In the case of *Spicer* v. *Bonker,* 45 Mich. 630, 8 N. W. 518, Justice COOLEY says, "The right to direct a verdict for the plaintiff on the mere presentation of the plaintiff's case by his counsel is one that should be sparingly used and only when the court is sure that a full and complete presentation has been made." Again a nonsuit should not be granted on an opening statement unless it is plainly evident therefrom that no case can be made out. *Emmerson* v. *Weeks,* 58 Cal. 382; *Preusse* v. *Childwold Park Hotel Co.,* 119 N. Y. Supp. 98; *Brashear* v. *Rabenstein,* 71 Kan. 455, 80 Pac. 950. Third, those cases in which the plaintiff suffers a nonsuit not merely because of a failure to state a good cause of action as in the cases cited under the second division above, but because the opening statement discloses a contract or transaction *contra bonos mores.* Mr. Justice FIELD in the case of *Oscanyan* v. *The Winchester Repeating Arms Co.,* 103 U. S. 261, 26 L. Ed. 539, says "When it is shown by the opening statement of counsel for the plaintiff, that the contract on which the suit is brought is void as being either in violation of law or against public policy, the court may direct the jury to find a verdict for the defendant." *Crichfield* v. *Bermudez Asphalt Pav. Co.,* 174 Ill. 466; *Wight* v. *Rindskopf,* 43 Wis. 344.